

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT COURT OF VIRGINIA
Alexandria Division**

SHERILL MALCOM,
Plaintiff,

v.
CAPITAL ONE BANK (USA), N.A.,

1680 Capital One Drive
Bank of America Center, 16th Floor
McLean, VA 22102-1111

Defendant.

) Civil Action No.
)
)
) PLAINTIFF’S COMPLAINT FOR
) DAMAGES
) (Telephone Consumer Protection Act)
)
)
)
)
)
)

COMPLAINT

SHERRILL MALCOM (“Plaintiff”), by and through her attorneys, alleges the following against CAPITAL ONE BANK (USA), N.A. (“Defendant”):

1. Plaintiff brings this action on behalf of herself individually seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act (hereinafter "TCPA"), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. Defendant conducts business in the state of Virginia, and therefore, personal jurisdiction is established. Venue is proper pursuant to 28 U.S.C. 1391(b)(2).

3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012), holding that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA.

1 § 227(a)(1) to place its telephone calls to Plaintiff seeking to collect a consumer debt allegedly
2 owed by Plaintiff, SHERRILL MALCOM.

3 13. Defendant's calls constituted calls that were not for emergency purposes as defined
4 by 47 U.S.C. § 227(b)(1)(A).

5 14. Defendant's calls were placed to a telephone number assigned to a cellular
6 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
7 227(b)(1).

8 15. Defendant never received Plaintiff's "prior express consent" to receive calls using
9 an automatic telephone dialing system or an artificial or prerecorded voice on her cellular
10 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

11 16. On September 15, 2017, Plaintiff called into Defendant's company at phone
12 number (800) 955-6600. Plaintiff spoke with Defendant's male representative and requested that
13 Defendant cease calling Plaintiff's cellular phone.

14 17. During the conversation on September 15, 2017, Plaintiff gave Defendant her social
15 security number and date of birth to assist Defendant in accessing her account before asking
16 Defendant to stop calling her cell phone (252) 342-13XX.

17 18. Plaintiff revoked any consent, explicit, implied, or otherwise, to call her cellular
18 telephone and/or to receive Defendant's calls using an automatic telephone dialing system in her
19 conversation with Defendant's representative on September 15, 2017.

20 19. Despite Plaintiff's request, Defendant continued to place telephone calls to
21 Plaintiff's cellular telephone after September 15, 2017.

22 20. Defendant placed at least forty-eight (48) automated calls to Plaintiff's cellular
23 telephone from September 2017 to November 2017.
24
25

FIRST CAUSE OF ACTION

**NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT 47 U.S.C. § 227**

21. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-20.

22. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

23. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B).

24. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

**KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT
47 U.S.C. § 227 et. seq.**

25. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-20.

26. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

//

//

1 27. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et
2 seq., Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every violation,
3 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

4 28. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the
5 future.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, SHERRILL MALCOM, respectfully requests judgment be
8 entered against Defendant, CAPITAL ONE BANK (USA), N.A. for the following:

9 **FIRST CAUSE OF ACTION**

10 For statutory damages of \$500.00 multiplied by the number of TCPA violations alleged
11 herein (48), \$24,000.00;

12 Actual damages and compensatory damages according to proof at time of trial;

13 **SECOND CAUSE OF ACTION**

14 For statutory damages \$1,500.00 multiplied by the number of TCPA violations alleged
15 herein (48), \$72,000.00;

16 Actual damages and compensatory damages according to proof at time of trial;

17 **ON ALL CAUSES OF ACTION**

18 Actual damages and compensatory damages according to proof at time of trial;

19 Costs and reasonable attorneys' fees;

20 Any other relief that this Honorable Court deems appropriate.

21 **JURY TRIAL DEMAND**

22 Plaintiff demands a jury trial on all issues so triable.

23
24
25 //

1 Dated: December 4, 2018

RESPECTFULLY SUBMITTED,

2
3 /s/ Alexis Kokkinos

4 Alexis A. Kokkinos, Virginia Bar No. 87262
5 Attorney for Plaintiff SHERRILL MALCOLM
6 Attorney at Law
7 360 W. Ocean Blvd, #302
8 Long Beach, CA 90802
9 T: (562) 354-3053
10 F: (866) 219-5310
11 E: alexiskokkinosesq@gmail.com

12 By: /s/ Alyson J. Dykes,

13 Alyson J. Dykes, CA Bar #319835
14 Attorney for Plaintiff SHERRILL MALCOLM
15 The Law Offices of Jeffrey Lohman, P.C.
16 4740 Green River Road, Suite 310
17 Corona, CA 92880
18 T: (657) 500-4317
19 F: (657) 227-0270
20 E: alysond@jlohman.com
21 *Pro Hac Vice* Application to follow
22
23
24
25